IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11454 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUMANBHAI NATHAJI SONI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 11454 of 2004

MR PRAVIN GONDALIYA for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 02/02/2005

ORAL JUDGEMENT

1. By way of filing this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged his detention order passed

against him by Police Commissioner, Surat City, on 04th of August, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short) directing detention of present petitioner as dangerous person within the meaning of the PASA Act. The petitioner came to be detained in pursuance of the said order from 04th of August, 2004.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials in passing of the order of detention against the petitioner. Firstly, the fact of registration of five criminal cases against the petitioner under Sections 380, 454, 411 and 114 of the Indian Penal Code, and secondly two in-camera statements of the witnesses recorded on 17th of July, 2004 verified by the detaining authority on 31st of July, 2004. The five criminal cases came to be registered against the petitioner before Umra Police Station on 17th of April,2003, 22nd of April, 2004, 10th of May, 2004, 11th of May, 2004 and 21st of May, 2004. The allegation against the petitioner in these cases is made that along with his accomplices, the petitioner causing the offences of theft and purchases the stolen property. While two statements reveal that one witness was beaten by the petitioner on account of denial of the amount demanded by the petitioner, and in second incident, the witness refused for hiring his vehicle by the petitioner and he was beaten. In both the incidents, it is alleged that the crowd was gathered, but the petitioner and his accomplices were leashed with deadly weapons by which they rushed towards the crowd, which dispersed. On account of this terror, the shops and business came to be closed and the residents of the locality also confined themselves in their residence after closing the doors.

3. From the above material, the detaining authority came to the conclusion that the petitioner was habitually committing offences under the Indian Penal Code and was headstrong person. Petitioner and his accomplices used to keep deadly weapons with them, and in committing his illegal activities, the petitioner used to harass and beat innocent citizens. The detaining authority therefore came to the conclusion that the activities of the petitioner was required to be prevented forthwith because such activities were prejudicial to the maintenance of public order. The detaining authority after taking into consideration other remedies available against the petitioner in general law, came to the conclusion that there was no other alternative except to

detain the petitioner under the PASA Act and hence the detaining authority passed the order of detention against the petitioner which is under challenge in this petition.

4. Learned Advocate Mr.Pravin Gondaliya for the petitioner and learned AGP Mr.H.M. Prachchhak for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by learned AGP is also taken into consideration.

5. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether the order in question deserves to be declared unlawful and illegal in absence of placing vital facts and material before the detaining authority.

6. True it is that, in all the five cases registered against the petitioner before the Umra Police Station, he was released on bail in the month of June, 2004. The order of detention, as aforesaid, came to be passed on 4th of August, 2004. Learned Advocate Mr. Gondaliya for the petitioner upon instructions and upon certified copies of the charge sheet, makes a statement that the petitioner while was in custody in last offence registered against the petitioner at Umra Police Station, on 30th of May, 2004 by transfer warrant came to be also arrested in Crime Register No. 78 of 2004 registered at Shehara Police Station of Godhra District. Crime Register No.78 of 2004 also came to be registered against the petitioner for abatement in committing the offence of theft and for purchasing of the stolen property. According to the learned Advocate for the petitioner though the petitioner was released on bail in the cases registered against him at Umra Police Station, but factually, the petitioner was in, firstly, police custody and thereafter in judicial custody right from 30th of May, 2004 to 12th of January, 2005 in Crime Register No. 78 of 2004, registered at Shehara Police Station, by this Court. Thus in Crime Register No.78/2004 the petitioner was arrested on 30.5.04 and was released on bail by this Court only on 12th of January, 2005.

7. In view of the above statements made by learned Advocate for the petitioner and from the certified copy of the charge-sheet which is shown, the position emerges that right from 30th of May, 2004 to 12th of January, 2005, the petitioner was in custody and in the meantime, on 4th of August, 2004, the order of detention came to be passed against the petitioner. The detaining authority

though took into consideration the fact of registration of criminal cases against the petitioner before Umra Police Station, but the fact of offence registered against the petitioner before Shehara Police Station being Crime Register No. 78 of 2004, and the fact that in the said crime, the petitioner was in custody, was not at all taken into consideration by the detaining authority because this vital fact and material was not placed before the detaining authority by the sponsoring authority. True it is that, an order of detention can be passed against detenu while he is in judicial custody, but while passing such order, the detaining authority must take into consideration the cogent material. Anyhow, this is a case wherein vital fact of petitioner being in custody in other offence was not at all placed for consideration of detaining authority at the time of passing the order of detention. This is a case where there was no awareness on the part of the detaining authority towards the vital fact while passing the order, and not a case wherein the order of detention becomes invalid on account of non-application of mind by the detaining authority as to the material placed for consideration to the detaining authority. There cannot be any doubt about the fact that detenu was in custody and was out of circulation, is a vital fact for consideration of passing of detention order.

8. The facts of this case are covered by three decisions of the Apex Court, (i) in the matter of BIRU MAHATO vs. DISTRICT MAGISTRATE, DHANBAD, as reported in AIR 1982 SC 1539; (ii) in the matter of V.C. MOHAN vs. UNION OF INDIA, as reported in (2002) 3 SCC 451 and (iii) in the matter of K. VARDHARAJ vs. STATE OF T.N. AND OTHERS, as reported in (2002) 6 SCC 735, wherein the ratio laid down by the Apex Court in all the three decisions, is non-placing of relevant and vital material before the detaining authority by the sponsoring authority is not only a lapse but a serious lapse on he part of the officials, resulting in the order of detention to be declared unlawful and illegal and when a subjective satisfaction is reached by the detaining authority without the awareness of the vital facts, the order of detention cannot be sustained.

9. In the above view of matter, it is clear that the fact that the petitioner was in custody in other crime i.e. Crime Register No. 78 of 2004 registered before the Shehara Police Station, right from 30th of May,2004 to 12th of January, 2005, was never placed before the detaining authority for consideration. The order under challenge is required to be quashed only on this ground

that the order came to be passed by the detaining authority without awareness of the vital fact.

10. In the result, the petition is allowed. The order passed by the Commissioner of Police, Surat City, on 4th of August, 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The petitioner - Sumanbhai Nathaji Soni is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R.Vora, J.)

p.n.nair